

**BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTI-DISTRICT LITIGATION**

IN RE: JOHNSON & JOHNSON TALCUM)
POWDER PRODUCTS MARKETING,) MDL Docket No. 2738
SALES PRACTICES AND PRODUCTS)
LIABILITY LITIGATION)

**CONSOLIDATED INTERESTED PARTY RESPONSE OF PLAINTIFFS CAMMY AND
MICHAEL A. MARCHETTI AND OTHERS IN SUPPORT OF MOTION FOR
TRANSFER AND CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407**

The following interested Parties (collectively “Georgia/Florida TALC Plaintiffs), respectfully submit this response in support of the Motion for Consolidation and Transfer Pursuant to 28 U.S.C. § 1407, filed July 15, 2016 by Plaintiff Tanshiska Lumas from the Southern District of Illinois:

1. **Cammy and Michael A. MARCHETTI**, plaintiffs in *Marchetti v. Johnson & Johnson, Johnson & Johnson Consumer, Inc., Johnson & Johnson Consumer Companies, Inc., and Johnson & Johnson Consumer Product Company, and Imerys Talc America, Inc., F/K/A Luzenac America, Inc.*, Case No. 4:16-cv-00227-CDL (MD Ga., June 29, 2016);
2. **Nancy Crews Hicks and Brannon Rice HICKS, Sr.**, plaintiffs in *Hicks v. Johnson & Johnson, Johnson & Johnson Consumer, Inc., Johnson & Johnson Consumer Companies, Inc., and Johnson & Johnson Consumer Product Company, and Imerys Talc America, Inc., F/K/A Luzenac America, Inc.*, Case No. 5:16-cv-00355-LJA (MD Ga., Aug. 4, 2016);
3. **Allison WALKER**, plaintiffs in *Walker v. Johnson & Johnson, Johnson & Johnson Consumer, Inc., Johnson & Johnson Consumer Companies, Inc., and Johnson & Johnson Consumer Product Company, and Imerys Talc America, Inc., F/K/A Luzenac America, Inc.*, Case No. 1:16-cv-02840-AT (ND Ga., Aug. 4, 2016).

Plaintiff Lumas’s Motion seeks centralization of these actions in the Southern District of Illinois. While Plaintiffs here adopt the reasoning of the motion with respect to the efficiencies served by consolidation for pre-trial proceedings, they request consolidation of this matter with assignment to the Honorable Judge Clay D. Land, Chief Judge for the Middle District of Georgia,

where at least three Related Actions are already pending¹ and more are most certainly expected to be filed. To date, there are four (4) cases filed in Georgia.

Consolidation is appropriate in this case. The Defendants currently face two class action lawsuits (SD Illinois and ED California) and many other individual personal injury actions around the United States alleging that regular use of Defendants' talcum powder products cause ovarian cancer. These actions contain multiple common questions of fact, and consolidation will eliminate duplication in discovery, avoid conflicting rules and schedules, and reduce litigation costs for all parties involved. In addition to the factors set forth in Lumas's motion for consolidation, Plaintiffs anticipate many thousands of documents are pertinent to the underlying dispute and will be discoverable by the various plaintiffs regarding the claims that have been asserted. Centralization, governance, use of, and access to and these common documents should be a shared objective by all parties.

Beyond the factual commonalities, consolidation will also conserve the time and effort of the parties, attorneys, witnesses, and the courts. As 28 U.S.C. § 1407 authorizes the Judicial Panel on Multidistrict Litigation (JPML) to transfer civil actions "involving one or more common questions of fact ... to any district for coordinated or consolidated pretrial proceedings" to "promote the just and efficient conduct of such actions," the Plaintiffs here respectfully submit that consolidation in the Middle District of Georgia before Chief Judge Clay D. Land will best fulfill those goals. While Plaintiffs have no doubt about Judge Herndon's skill and ability to handle complex matters in an MDL, they do note that he currently has two MDLs pending, and only eight

¹ *Marchetti*, Case No. 4:16-cv-00227; *Traylor*, Case No. 4:16-cv-00263; and *Hicks*, Case No. 5:16-cv00355-LJA.

federal judges are currently handling more than two cases nationwide.² One of his cases, *In re: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Product Liability Litigation*, currently has 1,687 actions now pending.³ By contrast, Judge Land is currently presiding over only one MDL, *In re: Mentor Corp. ObTape Transobturator Sling Products Liability Litigation*, which has 316 actions.⁴ As the JPML is well-aware, adjudicating MDL actions is difficult and time-consuming. Accordingly, the significant difference in number of actions pending is a significant factor in favor of consolidation before Judge Land. *See, e.g., In re Classicstar Mare Lease Litig.*, 528 F.Supp. 2d 1345, 1347 (J.P.M.L. 2007) (noting “general docket conditions permit us to make the Section 1407 assignment knowing that the court has the resources available to manage [the] litigation.”); DAVID F. HERR, MULTIDISTRICT LITIGATION MANUALS § 7:8 (2009) (noting relative docket conditions of a prospective transferee judge “may be the most important factor in selecting a transferee judge). Judge Land is supremely qualified to adjudicate this type of litigation. In addition to *In re: Mentor Corp. ObTape Transobturator Sling Products Liability Litigation* – another MDL involving gynecologic health issues and concerns for women – Judge Land has presided over other MDLs and complex cases.⁵ He has also sat by designation on the U.S. Court of Appeals for the 11th Circuit. Despite complex cases on his docket, a review of the

² *MDL Statistics Report – Distribution of Pending MDL Dockets by District* (July 15, 2016), UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-July-15-2016.pdf.

³ *Id.*

⁴ *Id.*

⁵ *See, e.g. In re Tyson Foods, Inc.*, No. 4:07-md-0184 (*FLSA Litigation*); *In re Carmike Cinemas, Inc.*, Case No. 4:16-cv-154-CDL (M.D. Ga. April 25, 2016)(*Shareholder Litigation*); *Solak v. Passman* No. 4:15-CV-154(CDL)(M.D. Ga. April 26, 2016 (*Securities Litigation*); *Heidarpour v. Cent. Payment Co., LLC*, No. 4:15-CV-139 (CDL) (M.D. Ga. Aug. 18, 2015)(TCPA class litigation); *Cox et al. v. Community Loans of America*, No. 4:11-CV-177-CDL (M.D. Ga. Nov. 11, 2011)(nationwide title loan litigation).

most recent Civil Justice Reform Act report shows that as of September 30, 2015, Judge Land has not had a single civil motion briefed and undecided for six months or more.⁶ Judge Land has the capability, expertise, and experience necessary to efficiently oversee this type of complex litigation.

Aside from his docket availability, Judge Land's courtroom in Columbus, Georgia is approximately one and a half hours away from Atlanta Hartsfield-Jackson International Airport, the "world's most traveled airport."⁷ Plaintiffs likewise anticipate the evidence in this case will show a great number of the women affected by claims asserted in this litigation are located in the south, where environmental factors are more extreme and talc powder products are in higher demand. Although Johnson & Johnson is headquartered in New Brunswick, New Jersey, located outside of New York City,⁸ Delta Airlines alone operates an average of twelve flights from Newark to Atlanta, sixteen from LaGuardia to Atlanta, and seven from JFK each day.⁹ Many firms involved in this litigation will likely also have primary or affiliate offices in Atlanta, less than two hours away from Columbus. Consolidation in the Middle District of Georgia before Chief Judge Land affords the parties with the advantage of centrality offered by proximity to Atlanta without burdening docket space in other courts.

⁶ *Table CJRA 8 — Detailed Reports Civil Justice Reform Act (CJRA)*, UNITED STATES COURTS (Sept. 30, 2015), <http://www.uscourts.gov/statistics/table/cjra-8/civil-justice-reform-act-cjra/2015/09/30>.

⁷ Karla Cripps, *World's Busiest Airports Announced*, CNN BUSINESS TRAVELLER (April 4, 2016), <http://www.cnn.com/2016/04/04/aviation/worlds-busiest-airports/>

⁸ *Our Company*, JOHNSON & JOHNSON (July 25, 2016), <http://www.jnj.com/about-jnj>

⁹ *Airline & Flight Schedules*, DELTA AIRLINES, <http://www.delta.com/flightinfo/viewFlightSchedulesSetup.action>.

For the foregoing reasons, Interested Parties Cammy and Michael A. Marchetti support the consolidation of all related actions and transfer to the Middle District of Georgia, with assignment to the Honorable Judge Clay D. Land.

Respectfully submitted this 8th day of August 2016.

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PROOF OF SERVICE

In compliance with Rule 4.1 (a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, I hereby certify that the foregoing **CONSOLIDATED INTERESTED PARTY RESPONSE OF PLAINTIFFS CAMMY AND MICHAEL A. MARCHETTI AND OTHERS IN SUPPORT OF MOTION FOR TRANSFER AND CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407** and this Proof of Service were electronically filed with the Court of the JPML by using the CM/ECF and was served on all counsel or parties in manners indicated and addressed as follows:

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